

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

BLACKWATER SECURITY CONSULTING,  
LLC, a Delaware Limited Liability Company; and  
BLACKWATER LODGE AND TRAINING  
CENTER, INC. a Delaware Corporation,

Plaintiffs,

v.

WESTCHESTER SURPLUS LINES  
INSURANCE COMPANY, a Georgia  
Corporation; EVANSTON INSURANCE  
COMPANY, an Illinois Corporation; FIDELITY  
AND CASUALTY COMPANY OF NEW YORK,  
a South Carolina Corporation; and LIBERTY  
INSURANCE UNDERWRITERS, a  
Massachusetts Corporation,

Defendants.

Civil Action No. 05 6020

Electronically Filed

Assigned to Judge Petrese B. Tucker

**DEFENDANTS' MOTION  
TO TRANSFER VENUE  
PURSUANT TO 28 U.S.C. § 1404(a)**

Defendants Evanston Insurance Company ("Evanston"), The Fidelity and Casualty Company of New York ("Fidelity") and Liberty International Underwriters ("Liberty") (hereinafter, "Moving Defendants") move pursuant to 28 U.S.C. § 1404(a) to transfer this case to the United States District Court for the Eastern District of North Carolina. Defendant Westchester Surplus Line Insurance Company ("Westchester") consents to the motion and to the transfer of the case to the Eastern District of North Carolina but does not join in the motion. In support of the Motion, Moving Defendants state as follows:

1. Plaintiffs could have filed this action in the Eastern District of North Carolina based on diversity jurisdiction because their principal place of business is in Moyock, North Carolina, North Carolina has jurisdiction over Moving Defendants, and the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332; *Blackwater Complaint*, ¶¶ 17-18; *Affidavit of*

*Representative of Liberty International Underwriters*, ¶ 4; *Declaration of Thomas Lucia* ¶ 4; *Declaration of Frances M. Mares*, ¶ 5. Upon information and belief, Westchester also does business and has contacts in North Carolina.

2. Moving Defendants' are neither incorporated nor have a principal place of business in Pennsylvania. *Affidavit of Representative of Liberty International Underwriters*, ¶ 2; *Declarations of Thomas Lucia and Frances M. Mares*, ¶ 2. Westchester is incorporated in Georgia and has a principal place of business in Roswell, Georgia. *Westchester Answer*, ¶ 19.

3. Plaintiffs' principal place of business is in Moyock, North Carolina. *Blackwater Complaint*, ¶¶ 17-18.

4. Because Plaintiffs are not residents of Pennsylvania and the operative facts of this action occurred in North Carolina, Plaintiffs' choice of Pennsylvania as their forum should receive little deference. *Horace Mann v. Nationwide*, 2005 U.S. Dist. LEXIS 4199 at \*7; *Affidavit of Representative of Liberty International Underwriters*, ¶ 2; *Declarations of Thomas Lucia and Frances M. Mares*, ¶ 2; *Westchester Answer*, ¶ 19.

5. Moving Defendants' policies each list the address of their "insured" or "named insured" as Moyock, North Carolina. *Affidavit of Representative of Liberty International Underwriters*, ¶ 3; *Declarations of Thomas Lucia and Frances M. Mares*, ¶ 3. Upon information and belief, Westchester's policy lists the address of its "named insured" as 550 Puddin Ridge, Moyock, North Carolina 27958.

6. The wrongful death action giving rise to this case is pending in North Carolina. *Blackwater Comp.*, ¶ 1; *see also Nordan Complaint*.

7. The witnesses with knowledge about the issues in this case and many of the documents relating to the claims and defenses in this case are likely located in North Carolina. *Nordan Comp.*, ¶¶ 12-67.

8. Moving Defendants are aware of no relationship between Pennsylvania and the issues in dispute in this action, none of the events related to the issuance of Moving Defendants' policies took place in Pennsylvania, and there are no witnesses or documents relating to the issuance of Moving Defendants' policies located in Pennsylvania. *Affidavit of Representative of Liberty International Underwriters*, ¶ 5; *Declaration of Thomas Lucia*, ¶ 5; *Declaration of Frances M. Mares*, ¶ 6; *see also Blackwater Complaint and Nordan Complaint*. Upon information and belief, Westchester is aware of no relationship between Pennsylvania and the issues in dispute in this action, none of the events related to the issuance of Westchester's policy took place in Pennsylvania, and there are no witnesses or documents relating to the issuance of Westchester's policy located in Pennsylvania.

9. Moving Defendants prefer the venue of the Eastern District of North Carolina.

10. Plaintiffs' internet website is at [www.blackwaterusa.com](http://www.blackwaterusa.com). This website describes the businesses of Blackwater Security and Blackwater Lodge and states that they own over 6000 acres of land and employ over 175 people in North Carolina. Plaintiffs' website does not indicate that Plaintiffs have any presence in Pennsylvania. *See* <http://www.blackwaterusa.com>

11. In support of this Motion, Moving Defendants submit the *Affidavit of Representative of Liberty International Underwriters* and the *Declarations of Thomas Lucia and Frances M. Mares*.

WHEREFORE, the Moving Defendants respectfully request that this Honorable Court enter an order transferring this action to the United States District Court for the Eastern District of North Carolina pursuant to 28 U.S.C. § 1404(a).

This the 19<sup>th</sup> day of April, 2006.

Respectfully submitted,

LAVIN, O'NEIL, RICCI, CEDRONE &  
DISIPIO

/s/ Francis P. Burns III

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*Counsel for The Fidelity and Casualty  
Company of New York*

POST & SCHELL, P.C.

/s/ John C. Sullivan

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Signature Validation Code: JCS7648  
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Four Penn Center  
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Philadelphia, PA 19103-2808  
(215) 587-1000  
*Attorneys for Defendant,  
Liberty International Underwriters  
improperly named as Liberty Insurance  
Underwriters*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

BLACKWATER SECURITY CONSULTING,  
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UNDERWRITERS, a Massachusetts  
Corporation,

Defendants.

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**AFFIDAVIT OF  
REPRESENTATIVE OF LIBERTY  
INTERNATIONAL UNDERWRITERS**

I, TONY GLENN, being duly sworn, hereby deposes and says:

1. I am the Vice President of Liberty International Underwriters ("Liberty International") and have personal knowledge of the facts in this Affidavit, except where stated upon as upon information and belief, and as to those matters, I believe them to be true. I am familiar with the books, records and operations of Liberty International regarding these facts and have authority to make this Affidavit. I make this affidavit in support of the Motion to Transfer Venue of Defendants Evanston, Fidelity and Casualty Company of New York and Liberty International Underwriters.

2. Liberty International is an insurance company incorporated under the laws of the Commonwealth of Massachusetts with its principal place of business in New York. Liberty

International is neither incorporated in nor has its principal place of business in Pennsylvania. In fact, Liberty International does not have any office in Pennsylvania.


3. Liberty International issued a Commercial Umbrella Liability Policy, number LQ1-B71-200233-014, to Blackwater Lodge and Training Center, Inc. for the policy period of January 27, 2004 to January 23, 2005 ("Liberty International Policy"). The Declarations page of the Liberty International Policy is attached as Exhibit 1 and lists the business address of Blackwater Lodge & Training Center, Inc. as 850 Puddin Ridge Road, Moyock, NC 27958.

4. Liberty International does significant business and has significant contacts in North Carolina.

5. Based upon reasonable investigation, there are no witnesses or documents relating to the issuance of the Liberty International Policy located in Pennsylvania.

FURTHER AFFIANT SAITH NOT.

This the 13 day of March, 2006.

  
TONY GLENN

SWORN by the said

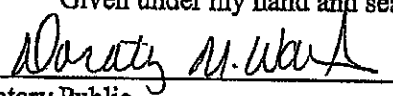
TONY GLENN

This the 13 day of March, 2006

Before me, Tony Glenn

I, a Notary Public in New York, do hereby CERTIFY that on the day of the date hereof personally came and appeared before me TONY GLENN who identified himself to be the person named and described in the within Affidavit and in my presence swore to the truthful contents of the same and signed the same as and of his free and voluntary act.

Given under my hand and seal of this office this 13 day of March, 2006.

  
Notary Public

My Commission Expires:

12/27/06

DOROTHY M. WATKINS  
Notary Public, State of New York  
No. 01WA5037404  
Qualified in Queens County  
Commission Expires December 27, 2006



Liberty Insurance Underwriters, Inc.

Policy Number: LQ1 B71 200 233-014

Renewal Of: New

**COMMERCIAL UMBRELLA DECLARATIONS PAGE**

1. **NAMED INSURED AND ADDRESS**  
Blackwater Lodge & Training Center, Inc.  
850 Puddin Ridge  
Moyock, North Carolina 27958
2. **POLICY PERIOD:** From: January 27, 2004 To: January 23, 2005  
12:01 A.M. Standard time at the address of the Named Insured shown above.

**IN RETURN FOR PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.**

**PRODUCER'S NAME AND ADDRESS**

Heath Insurance Brokers of Illinois  
300 South Wacker Drive, Suite 900  
Chicago, IL 60606

3. **PREMIUM:**

Commercial Umbrella:	\$145,000
TRIA Premium	\$0
Personal Umbrella:	\$0
Total Advance Premium:	\$0
Service Charge:	\$0
Taxes:	\$0
Surcharge:	\$0
Total:	\$145,000

In the event of cancellation by the Named Insured, the company will receive and retain no less than \$36,250 as a policy minimum premium.

**BASIS OF PREMIUM:** Non-Auditable ( x ) Auditable ( )

4. **LIMITS OF INSURANCE:**

\$15,000,000 - Each Occurrence  
\$15,000,000 - General Aggregate (where applicable)  
\$15,000,000 - Products-Completed Operations Aggregate

5. **SELF-INSURED RETENTION:** \$10,000

6. **FORMS AND ENDORSEMENTS ATTACHED:**

See Forms and Endorsements Schedule - 1005-UMB (4/00)

Countersigned February 26, 2004 By Marcia Nolan  
Date Authorized Representative

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COMPANY, an Illinois Corporation;  
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OF NEW YORK, a South Carolina  
Corporation; and LIBERTY INSURANCE  
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**DECLARATION OF THOMAS LUCIA**

I, Thomas Lucia, declare as follows, pursuant to 28 U.S.C. § 1746:

1. I am a citizen and resident of Illinois, am over the age of 18 years old, and am competent to make this Declaration. I am the Senior Key Account Underwriter for Shand Morahan & Company, Inc., the underwriting manager for Evanston Insurance Company ("Evanston") and have personal knowledge of the facts in this Declaration, except where stated as upon information and belief, and as to those matters, I believe them to be true. I am familiar with the books, records and operations of Evanston regarding these facts and have authority to make this Declaration. I make this Declaration in support of the Motion to Transfer Venue of Defendants Evanston, Fidelity and Casualty Company of New York and Liberty International Underwriters.



2. Evanston is an insurance company incorporated under the laws of the State of Illinois with its principal place of business in Deerfield, Illinois. Evanston is neither incorporated in nor has its principal place of business in Pennsylvania. In fact, Evanston does not have any office in Pennsylvania.


3. Evanston issued a Service and Technical Professional Liability Insurance Policy, Policy EO-819173, for the period of March 17, 2004 to March 17, 2005 with a retroactive date of March 17, 2003 to two "Named Insureds": Blackwater Lodge and Training Center, Inc. ("Blackwater Lodge") and Blackwater Security Consulting, LLC ("Blackwater Security") (collectively "Blackwater") ("the Evanston Policy."). The Evanston Policy is attached to Evanston's Answer and Counterclaim as Exhibit A and lists the business address of the "Insured" as 850 Puddin Ridge Road, Moyock, NC 27958.

4. Evanston is an eligible surplus lines insurer in the state of North Carolina and places a considerable number of policies in that state annually.

5. Evanston is aware of no relationship between Pennsylvania and the issues in dispute in this action, none of the events related to the issuance of the Evanston Policy took place in Pennsylvania, and there are no witnesses or documents relating to the issuance of the Evanston Policy located in Pennsylvania.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 11, 2006.

  
Thomas Lucia  
Senior Key Account Underwriter for Shand  
Morahan & Company, Inc., the underwriting  
manager for Evanston Insurance Company

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UNDERWRITERS, a Massachusetts  
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**DECLARATION OF  
FRANCES M. MARES**

I, Frances M. Mares, declare pursuant to 28 U.S.C. § 1746:

1. I am a citizen and resident of Illinois, am over the age of 18 years old, and am competent to make this declaration. I am a Claim Director who manages claims for The Fidelity and Casualty Company of New York ("Fidelity") and a number of other insurance companies who operate under the trade name "CNA" I have personal knowledge of the facts in this declaration, except where stated as upon information and belief, and as to those matters, I believe them to be true. I make this declaration in support of the Motion to Transfer Venue of Defendants Evanston, The Fidelity and Casualty Company of New York and Liberty International Underwriters.

2. Fidelity is an insurance company incorporated under the laws of the State of South Carolina with its principal place of business in Illinois. Fidelity is neither incorporated in nor has its principal place of business in Pennsylvania.

3. Fidelity issued International Voluntary Workers' Compensation and Employers' Liability Coverage Form Policy No. DBA 22 390 1731 for the period March 18, 2004 to June 18, 2004, to Plaintiffs Blackwater Security Consulting, LLC and Blackwater Lodge and Training Center, Inc. (the "Fidelity Policy."). The Fidelity Policy lists the business address of the "Insured" as 850 Puddin Ridge Road, Moyock, NC 27958.

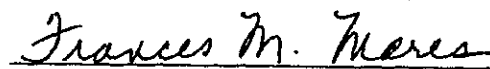
4. The Fidelity Policy bars coverage for "serious and willful misconduct," Coverage Form, Part I, ¶ F, and for "bodily injury intentionally caused or aggravated by" the insured, Coverage Form, Part II, ¶ C.

5. Fidelity does business and has contacts in North Carolina, as evidenced by the Fidelity Policy issued to Plaintiffs Blackwater Security Consulting, LLC and Blackwater Lodge and Training Center, Inc. in Moyock, North Carolina.

6. I am aware of no relationship between Pennsylvania and the issues in dispute in this action and, upon information and belief, none of the events related to the issuance of the Fidelity Policy took place in Pennsylvania and there are no witnesses or documents relating to the issuance of the Fidelity Policy located in Pennsylvania.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 11, 2006

  
\_\_\_\_\_  
Frances M. Mares

**CERTIFICATE OF SERVICE**

I, Francis P. Burns III, Esquire, hereby certify that a true and correct copy of the Defendants' Motion to Transfer Venue Pursuant to 28 U.S.C. § 1404(a) and Memorandum in Support, was served on April 19, 2006, via United States First Class Mail, postage prepaid, to all counsel of record addressed as follows:

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/s/ Francis P. Burns III  
FRANCIS P. BURNS III